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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,660	06/21/2001	Tomiko Erickson	1.792.00	4747

7590 04/21/2003

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT PAPER NUMBER

3618

DATE MAILED: 04/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/886,660**

Applicant(s)  
**Erickson**

Examiner  
**Vanaman**

Art Unit  
**3618**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 7, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 4-8, and 10-24 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8, and 10-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other: \_\_\_\_\_

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### **Status of Application**

1. Applicant's amendment, filed Feb. 7, 2003, has been entered in the application. Claims 1, 4-8, and 10-24 are pending, claims 2, 3 and 9 having been canceled, claims 21-24 having been added.

### **Claim Rejections - 35 USC § 103**

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 4-10, 13-15, 18, 19, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guggenheim (US 4,948,154, cited previously) in view of Dismuke (US 5,195,778, cited previously).

Guggenheim teaches a cover (10) for a cart (12) forming an interior enclosure, including a top (14) and side wall (16, 18) formed from a protective material, the top overlying a top of the cart (12), the sidewall attached to the top and depending therefrom, the cover leaving an open bottom space to allow the cart to engage the ground, an access opening sized to correspond to the cart side and which allows access to a major portion of the cart side, the opening closed by a closure drape (22, 24), selectively positionable to allow or disallow access, the drape and sidewall including connecting elements (28, 26) allowing the drape to be connected to the sidewall; the cover including portions which may be constructed from a nylon material, which is generally hypoallergenic; the top portion, side walls and drape portions including elongated reinforcements (see exemplary illustration, figure 6, which illustrates the reinforcements proximate the closure securement structure) along the periphery of each section, formed by thickened material portions (in this case, folded over and sewn portions), wherein a reinforced perimeter portion extends outwardly from the exterior of the enclosure (see top of cart and enclosure, figure 4). The reference of Guggenheim is discussed above and fails to teach at least a first compartment and second compartments to retain items.

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Dismuke teaches a flexible covering device which includes a plurality of exterior compartments (8) for accommodating items associated with the use of the covering device. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a plurality of compartments as taught by Dismuke on the cover of Guggenheim for the purpose of allowing various miscellaneous items to be quickly stored and carried. As particularly regards the provision of compartments on the interior of the covering device, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide at least one of the compartments inside the covering device of Guggenheim in order that the contents of that compartment are afforded the benefit clearly taught by Guggenheim of being positioned in a more sterile environment.

The reference of Guggenheim as modified by Dismuke fails to teach the cover as being foldable. Inasmuch as the cover of Guggenheim is taught to be made from a flexible material, it would have been obvious to one of ordinary skill in the art at the time of the invention to allow the cover to be folded, for the purpose of allowing easy storage of the cover when it is not positioned on a cart.

4. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guggenheim in view of Dismuke and Haberkorn (US 6,196,287 filed 8/1996). The references of Guggenheim and Dismuke are discussed above and fail to teach a further compartment connected to the exterior of the covering device and including a transparent window material. Haberkorn teaches a flexible covering device which includes a transparent windowed compartment (40) for the carrying of data or indicia describing the contents of the item accommodated in the interior of the covering device. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the covering device of Guggenheim as modified by Dismuke with a further transparent compartment for the purpose of allowing a document describing the contents of the cart to be carried with the cart and visible to an operator thereof.

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5. Claims 16, 17, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guggenheim in view of Franke (US 5,474,185, cited previously). The reference of Guggenheim as modified by Dismuke is discussed above and fails to teach the periphery of the top as including pads which protect at least the corners of the top. Franke teaches a flexible cover which includes a top (2) and sides (2', 2''), wherein the top and side periphery are provided with a plurality of pads (3, 3') for protection. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the peripheral protective pad taught by Franke to the top-to-sidewall peripheral junction of the cover of Guggenheim as modified by Dismuke for the purpose of preventing injury to a person colliding with the cart under its covering device, as well as protecting the cart itself, and any stationary objects which may be in the path of travel of the cart.

#### **Response to Arguments**

6. Applicant's comments have been carefully considered. As regards applicant's comments concerning the replacement of 'hyper-allergenic' with 'hypo-allergenic', the Exhibit submitted, which provides a description of a preferred material as recited in the specification, appears to support the assertion that 'hypo-allergenic' would be appropriately used in this case. Applicant's reference to the bacterial qualities of the material is entirely unclear, and in light of the Exhibit indicating the material being "non allergenic" it is not at all clear why applicant has instead directed the examiner's attention to the bacterial qualities of the material rather than its allergenic qualities, as these are not necessarily the same qualities. Applicant is also herein specifically reminded of the content of the 'reviewed and understands' phrase of the executed declaration filed with the application.

As regards the reference of Guggenheim as being applied against the claims by itself, in view of the amendments to the claims, these rejections have been withdrawn. As regards applicant's comments concerning the reference of Guggenheim being hyper-allergenic, note that applicant had indeed claimed the cover as being such, as can be seen from a copy of the claims as

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originally filed. Also note that Guggenheim employs nylon material as well, which is generally hypo-allergenic. The examiner agrees that Guggenheim lacks the storage pockets, and it is for this reason that the reference to Dismuke is applied.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that Dismuke is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, while Dismuke is intended for use in an automotive environment, Dismuke remains appropriately analogous in that it is certainly pertinent to the problem being solved, namely the provision of pockets on a flexible cover in order to store elements being employed by a user of the cover.

In view of Guggenheim's advantageous provision of a relatively sterile interior, the provision of further pockets on an inside of the cover to take further advantage of the relatively sterile environment would not be deemed to be beyond the skill of the ordinary practitioner.

Applicant's comments concerning the Foster reference are noted and persuasive. Note the reference to Franke, cited previously and now applied.

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### Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is (703) 308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop \_\_\_\_  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

or faxed to :

(703) 305-3597 or 305-7687 (for formal communications intended for entry;  
informal or draft communications may be faxed to the same number but should be  
clearly labeled "UNOFFICIAL" or "DRAFT")

The Office has also established electronic fax servers for Technology Center 3600 as follows:

703-872-9326 (Official communications)  
703-872-9327 (Official After Final communications)  
703-872-9325 (Customer Service)

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**

F. Vanaman  
April 17, 2003



1/17/03